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9 HEALTHCARE SYSTEM, INC., dba  
SOUTHERN CALIFORNIA HOSPITAL  
10 AT CULVER CITY

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 DONNA RATLIFF, individually and on  
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 PROSPECT MEDICAL HOLDINGS,  
INC. dba SOUTHERN CALIFORNIA  
18 HOSPITAL AT CULVER CITY,

19 Defendant.

Case No. 2:16-cv-00253-GW-JEM

*Honorable George H. Wu*

**CLASS ACTION**

**DEFENDANT'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS THE FIRST AMENDED  
COMPLAINT OR, IN THE  
ALTERNATIVE, TO STRIKE THE  
CLASS ALLEGATIONS**

Fed. R. Civ. P. 12(b)(6), 12(f), and  
23(d)(1)(D)

Date: Thursday, April 14, 2016  
Time: 8:30 a.m.  
Ctroom: 10 (Spring Street)

FAC Filed: Feb. 17, 2016



# **I. INTRODUCTION AND FACTUAL BACKGROUND**

Plaintiff Donna Ratliff (“**Plaintiff**”) asserts two causes of action against Defendant Southern California Healthcare System, Inc. dba Southern California Hospital at Culver City (erroneously sued as Prospect Medical Holdings, Inc.) (“**SoCal Hospital**”) for violation of the Telephone Consumer Protection Act (“**TCPA**”). Her claims are riddled with problems, both factual and legal. Those problems, however, should never have to be litigated. Instead, her claims should be dismissed on the pleadings for one simple reason: She consented to the alleged calls. Because consent wipes out any TCPA claim, the Court should dismiss her First Amended Complaint.

Plaintiff alleges that SoCal Hospital contacted her on her cellphone in August 2015 about an “outstanding debt stemming from medical services rendered,” and left a voicemail to contact the hospital about repayment. (FAC ¶¶ 6-12.) The FAC does not provide any specifics about the medical services rendered or the outstanding debt, or include anything about her contract with SoCal Hospital under which those services were rendered and the debt accrued. Had Plaintiff done so, she would have been unable to state a claim. That contract, signed by Plaintiff, includes a provision (which was separately initialed by Plaintiff) wherein Plaintiff consents to SoCal Hospital contacting her by telephone (including on her cellphone), even with an autodialer or prerecorded message.<sup>1</sup> Because SoCal Hospital does not want

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<sup>1</sup> Plaintiff may argue that the Court ought not consider the contract because it was not attached to the FAC. To the contrary, under established Ninth Circuit law, plaintiffs are not permitted to deliberately omit from their pleadings documents that are integral to their claims. As a result, courts may consider such documents on a motion to dismiss without converting the motion into one for summary judgment where (1) authenticity is not disputed; (2) the plaintiff is on notice of the contents of the documents; and (3) the documents are integral to the claims being asserted. *See Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998); *Martinez v. Welk Group, Inc.*, No. 09 CV. 2883, 2011 WL 90313, at \*1, \*3 (S.D. Cal. Jan. 11, 2011). Here, all three requirements are met: (1) Plaintiff’s

1 to risk violating HIPAA's privacy protections, it has not attached a copy of the  
 2 contract, but can provide the Court with a copy should Plaintiff or the Court require  
 3 it. In any event, the relevant portion of the contract, along with her initials, is pasted  
 4 below:

5 **10. PHONE CALLS**

6 It is understood and agreed that the hospital and/or a collection agency may contact me, or a representative I appoint, about my account,  
 7 using any contact information or cell phone numbers I provide to it, or that may be available to the hospital by obtaining a credit report on  
 8 me. I further agree that hospital may contact me by telephone, voice messages and text messages and may use automated dialing  
 9 technology and pre-recorded messages, even if I am charged for the call under my mobile phone plan. I agree that such contact will not be  
 "unsolicited" for purposes of local, state or federal law. I further agree that the hospital and/or its collection agencies may monitor and/or  
 record any communication with me.

10 Patient Initials 

11 In response, Plaintiff will no doubt rely on her vague allegations that she told  
 12 SoCal Hospital not to contact her as evidence that she revoked her consent. Her  
 13 allegations, however, are insufficient. She states that she "would answer  
 14 Defendant's calls and tell Defendant to stop contacting" her (FAC ¶ 4), but she  
 15 provides no details about when this occurred, to whom she spoke, or what  
 16 specifically she said. Was this before or after the voicemail that she bases her claim  
 17 on? What exactly did she convey to SoCal Hospital's representatives? Was this one  
 18 time or more than once? Moreover, her allegations that she spoke with a  
 19 representative of SoCal Hospital contradict her earlier allegations that SoCal  
 20 Hospital used a prerecorded message. Put simply, Plaintiff should not be permitted  
 21 to avoid dismissal where it is irrefutable that she gave consent and has provided only  
 the vaguest allegations that she later revoked that consent.

22 Finally, even if Plaintiff's allegations that she somehow revoked her prior  
 23 consent are sufficient to prevail on a motion to dismiss under Rule 12(b)(6), the  
 24 Court should strike Plaintiff's class allegations. Plaintiff's claim is not that she

25 \_\_\_\_\_  
 26 signature is not in dispute; (2) Plaintiff knows the contents – she signed it; and  
 27 (3) the contract underlies the medical services rendered and her debt for those  
 28 services, and thus also the alleged phone calls to collect on that debt. Because  
 that contract is irrefutable evidence that Plaintiff consented to the alleged calls,  
 her two causes of action for violation of the TCPA must be dismissed.

1 never gave consent, but that she later revoked consent. Her class definition,  
 2 however, is not so narrow. Instead, she purports to represent anyone who did not  
 3 consent in the first instance. She defines her class as follows:

4 All persons within the United States who received any  
 5 collection telephone calls from Defendant to said person's  
 6 cellular telephone made through the use of any automatic  
 7 telephone dialing system or an artificial or prerecorded  
 voice and such person had not previously consented to  
 receiving such calls within the four years prior to the filing  
 of this Complaint.

8 (FAC ¶ 17.) Where a plaintiff is not a member of the putative class that she  
 9 purports to represents, courts properly strike class allegations under Rules 12(f) and  
 10 23(d)(1)(D).

11 For these and the following reasons, SoCal Hospital respectfully requests that  
 12 the Court dismiss the FAC or, in the alternative, strike the class allegations.

## 13 **II. ARGUMENT**

### 14 **A. The FAC Should Be Dismissed Under Rule 12(b)(6) Because** 15 **Plaintiff Consented To The Alleged Calls**

16 It is settled law that a plaintiff who consented to being called has no claim  
 17 under the TCPA. *In the Matter of Rules & Regs. Implementing the Tel. Cons. Prot.*  
 18 *Act of 1991*, 7 F.C.C. Rcd. 8752 (1992) (“**1992 Ruling**”) at ¶ 29 (“The TCPA allows  
 19 autodialed and prerecorded message calls if the called party expressly consents to  
 20 their use.”). When a call is not placed for telemarketing purposes, consent may be  
 21 oral or written. *In the Matter of Rules & Regs. Implementing the Tel. Cons. Prot.*  
 22 *Act of 1991 Am. Ass’n of Healthcare Admin. Mgmt. et al.*, 30 F.C.C. Rcd. 7961  
 23 (2015) (“**2015 Ruling**”) at ¶ 4 (“If the call includes or introduces an advertisement  
 24 or constitutes telemarketing, consent must be in writing. If an autodialed or  
 25 prerecorded call to a wireless number is not for such purposes, the consent may be  
 26 oral or written.”). Consistent with this telemarketing/non-telemarketing distinction,  
 27 the FCC has made clear that consent for the purpose of debt collection calls can be  
 28

1 either oral or written. *See In the Matter of Rules & Regs. Implementing the Tel.*  
 2 *Cons. Prot. Act of 1991*, 23 F.C.C. Rcd. 559, 564 (2008) (“**2008 Ruling**”) at ¶ 10.

3 With respect to collection calls, where a plaintiff provides his or her telephone  
 4 number as part of the transaction giving rise to the debt, that is sufficient consent  
 5 under the TCPA. “[P]ersons who knowingly release their phone numbers have in  
 6 effect given their invitation or permission to be called at the number which they  
 7 have given, absent instructions to the contrary.” 1992 Ruling, ¶ 31. *See also In re*  
 8 *GroupMe, Inc. / Skype Commc’ns S.A.R.L. Petition*, 29 FCC Rcd. 3442, 3447 at ¶ 11  
 9 (2014) (“**2014 Ruling**”) (finding that provision of cellphone number was sufficient  
 10 consent in non-telemarketing context); 2008 Ruling at ¶ 10 (provision of cellphone  
 11 number in connection with a debt was sufficient consent to be called on matters  
 12 relating to the debt). Caselaw is also consistent with the FCC rulings. *See Mais v.*  
 13 *Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1121 (11th Cir. 2014); *Baird v.*  
 14 *Sabre Inc.*, 995 F. Supp. 2d 1100, 1106-07 (C.D. Cal. 2014); *Hudson v. Sharp*  
 15 *Healthcare*, No. 13-CV-1807-MMA NLS, 2014 WL 2892290, at \*4 (S.D. Cal. June  
 16 25, 2014).

17 Here, Plaintiff concedes that the calls were for debt collection purposes, and  
 18 her class is even defined to include only “collection” calls. As a result, Plaintiff  
 19 consented to the calls simply by providing SoCal Hospital her phone number as a  
 20 contact number about her medical services. But, as noted above, Plaintiff *also* gave  
 21 express written consent to the calls in her contract with SoCal Hospital. There can  
 22 be no doubt that this consent ends Plaintiff’s claims. Plaintiff’s vague allegations  
 23 that she somehow revoked her consent are insufficient.

24 **B. The Class Allegations Should Be Stricken Under Rules 12(f) and**  
 25 **23(d)(1)(D) Because Plaintiff Is Not A Member Of The Class**

26 Rule 12(f) permits courts to strike from a pleading “any redundant,  
 27 immaterial, impertinent, or scandalous matter.” Similarly, Rule 23(d)(1)(D) permits  
 28 the Court to order “that the pleadings be amended to eliminate allegations about



1 representation of absent persons.” Although striking class allegations at the  
2 pleadings is not common, it is permitted where the complaint demonstrates that a  
3 class action cannot be maintained. *See Hovsepian v. Apple, Inc.*, No. 08-5788 JF  
4 (PVT), 2009 U.S. Dist. LEXIS 117562, at \*5 (N.D. Cal. Dec. 17, 2009). *See also*  
5 *Castaneda v. Fila USA, Inc.*, No. 11-CV-1033-H BGS, 2011 WL 7719013, at \*2  
6 (S.D. Cal. Aug. 10, 2011); *Brazil v. Dell Inc.*, 585 F. Supp. 2d 1158, 1167, 2008  
7 U.S. Dist. LEXIS 95144, \*21 (N.D. Cal. 2008).

8       Important here, a class action cannot be maintained when the plaintiff (the  
9 class representative) is not a member of the putative class he or she purports to  
10 represent. *See General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 156-157  
11 (1982). *See also Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962); *Wal-Mart Stores,*  
12 *Inc. v. Dukes*, 131 S. Ct. 2541, 2550 (2011) (“In order to justify a departure from  
13 that rule [that litigation is conducted by and on behalf of the individual named  
14 parties only], a class representative must be part of the class and possess the same  
15 interest and suffer the same injury as the class members.”). If it is clear from the  
16 pleading that the plaintiff does not represent the putative class, the class allegations  
17 should be stricken. *See General Tel. Co.*, 457 U.S. at 156-157.

18       Here, Plaintiff seeks to represent a class of individuals who ***never*** consented  
19 to collection calls in the first instance. As set forth above, Plaintiff clearly does not  
20 fit within the putative class. To the extent Plaintiff revoked her consent, she may  
21 still have a claim, but her class must also be so limited to similarly situated  
22 individuals. Accordingly, if the Court does not dismiss the FAC, it should strike the  
23 class allegations.

### 24 **III. CONCLUSION**

25       For the foregoing reasons, SoCal Hospital respectfully requests that the Court  
26 grant its motion and dismiss the First Amended Complaint or, in the alternative,  
27 strike the class allegations therein.

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1 Dated: March 9, 2016

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2  
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